ORDER:

Challenging the action of the third respondent in conducting auction of the house property of the petitioner on 07.03.2005 and finalizing the sale without considering the objections dated 25.03.2005, the present Writ Petition is filed.

It is the case of the petitioner that for recovery of the debt borrowed by father of the petitioner from the respondents, the respondents brought the property admeasuring 409 sq. yards in survey no.285/4, Ramanaiahpeta village belonging to the petitioner, for auction scheduled to be held on 22.01.2004; the petitioner approached the bank authorities and requested time for repayment as he was not aware of the loan, and also filed Writ Petition No.944 of 2004, which was disposed of on 09.02.2004 directing him to approach the authorities under Rule 52 of the A.P. Co-operative Societies Rules, 1964; accordingly, he approached the authorities, but the authorities did not consider his request and conducted sale on 06.12.2004; as the purchaser K.Soubagyamma could not deposit the balance amount, the amount paid was forfeited; thereafter, the petitioner came to know of the auction of his house property through a notice in daily news paper on 07.03.2005, attended the auction, but the same was not conducted as there were no prospective bidders and so, he left the place; thereafter, the petitioner came to know that the sale was conducted on that day, which was knocked down in favour of one Shaik Parween; immediately, he filed objections on 25.03.2005 before the third respondent and requested him not to finalise the sale. It is the further case of the petitioner that the sale was proposed to be conducted contrary to Rule 52 (11)(e) of the A.P. Co-operative Societies Rules, 1964; that without considering the objections of the petitioner, the respondents are trying to finalise the sale; there is a collusion between the third and fourth respondents; the property would fetch more value; hence, the Writ Petition.

The respondents 2 and 3 filed counter affidavit contending that there is no illegality in conducting the auction and it was held duly complying with all the mandatory provisions; all the notices were properly served on the petitioner; pursuant to the interim orders of this Hon'ble Court, the sale has not been confirmed in favour of fourth respondent though full amount was paid by her; the intention of the petitioner is only to stall the proceedings; hence, the writ petition is liable to be dismissed.

Learned counsel for the petitioner contended that the petitioner has not received any notice from the respondent, and the auction notice was published contrary to the provisions of Rule 52 (11) (e) of the A.P. Co-operative Societies Rules, 1964 ; that no notice was given to the decree holder or defaulter and even though the petitioner submitted objections, the same were not considered; that number of persons were interested in the property for more value; that the value fetched in the auction is not the real market value and hence, prays to allow the Writ Petition.

On the other hand, the learned standing counsel for the respondents contended that copy of sale notice in form-9 was served on the petitioner against his acknowledgement on 01.02.2005; the respondents complied with the statutory requirement of publication by affixing the copy and another notice in form no.8 was affixed in the office of the Divisional Co-operative Officer, Kakinada and therefore, there is no illegality in conducting the auction.

It is alleged in the Writ Petition that the petitioner has not received any notice and the auction notice was published contrary to the provisions of Rule 52(11)(e) of the A.P. Co-operative Societies Rules, 1964 (for short, "the Rules") and therefore, the auction is liable to be set aside. Notice shall also be given to the decree holder and the defaulter and therefore, the sale conducted is contrary to the above

Rule.

In the counter affidavit, it is specifically stated by the respondents 2 and 3 that copy of sale notice was issued in form-9 to the petitioner, who acknowledged the same on 01.02.2005. It is also stated that the respondent has given the sale proclamation in form no.8 under Rule 52(11)(e) of the Rules relating to the sale of immovable property of the writ petitioner covered under CEP No.284/03-04 on the file of the Deputy Registrar of Co-operative Societies, Kakinada and the same was affixed on 31.01.2005 on the notice board of Divisional Co-operative Officer, Kakanida, who is the Functional Deputy Registrar within the meaning of Rule 52 (11) (e) of the Rules and the same was acknowledged by the said office on 31.01.2005. The contents of the sale notice were also informed to the public through beat of tom-tom on 1st, 2nd and 3rd March, 2005. As there was no response from the bidders, the auction was adjourned to 07.03.2005. Again, the sale was held on 07.03.2005 by giving wide publicity in daily newspapers Vaartha and Eeenadu and also by beat of tom-tom. Therefore, *prima facie*, the contention of the petitioner that the respondents failed to follow the procedure under Rule 52 (11)(e) of the Rules is untenable and devoid of merits.

The second contention of the petitioner is that when the petitioner submitted objections to the sale, the same were not considered. There is no provision brought to the notice of this Court that after auction, on any objections taken with regard to the sale, the respondents have to pass any orders. Therefore, in the absence of any such provision, even if the petitioner filed any objections, they need not be considered.

It is also one of the contentions that the sale price is less in view of the fact that the market value of the property is more than Rs. 10,00,000/-. There is also no basis for the said contention. Even otherwise, the main objection raised by the petitioner is that the auction is contrary to the Rule 52(11)(e) of the Rules. Under Rule

52(11)(e) of the Rules, proclamation of sale shall be published by affixing as notice at the office of the Registrar of the district and taluk office atleast 30 days before the date fixed for the sale. Since this Rule has been complied with by the respondents, question of deciding the objections does not arise.

Form no.8 notice has been published on 31.01.2005 and Form no.9 notice has been issued on the same day. The said copies also have been received by the petitioner. No other contravention is brought to the notice of this Court so as to set aside the sale. In pursuance of the sale, the fourth respondent paid the entire amount. Therefore, in the absence of any violation of the procedure in conducting the auction, the same can not be set aside.

The learned counsel for the petitioner relied on a decision in *M.Babu Rao & others v. Deputy Registrar of Co-operative Societies/Officer on Special Duty, Vasavi Co-operative Urban Bank Ltd., Malakpet, Hyderabad & others,* , wherein it is held that Section 71(1) of the A.P. Co-operative Societies Act, 1964 insofar as it expressly confers power on the Registrar to issue a certificate for recovery of arrears of any sum advanced by a financing Bank to its members, is beyond the legislative competence of the Sate. The issue raised in the above batch of cases is that whether the Registrar of Co-operative Societies has jurisdiction to entertain and decide the dispute under the Banking Co-operative Societies Act with respect to recovery of the amounts in excess of Rs. 10,00,000/- in view of the bar in jurisdiction under Section 18 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. As per the additional affidavit in this case, the sum due to the Bank is only Rs. 3,78,864/- with interest @ 19% p.a. from 27.08.2002. The above decision has to be read in the context of the issues raised before the Full Bench.

The learned counsel for the second respondent contended that since the Bank is not financed by the state, it is not an authority within the meaning of the Article 12 of the Constitution of India. For that

proposition, he relied on a decision reported in *Mani Enterprises v. Vasavi Co-operative Urban Bank Limited, Hyderabad & others*, wherein it is held as follows: (para 12)

> "The Vasavi Co-operative Bank no doubt obtained licence from the Reserve Bank of India. Nevertheless keeping in view the law laid down by the Supreme Court, it can not be treated as "State" for the purpose of Article 12 of the Constitution and Mandamus can not be issued to Vasavi Bank as the same does not perform any public duty."

There is no factual foundation that the Bank was received any financial assistance from the Government and that it is not operating on the basis of self-generated finances. There is no allegation that the society is fully funded and controlled by the State and that the service conditions of its employees are governed by statutory rules. Therefore, this Court is of the opinion that the Writ Petition against the society in the absence of any factual foundation, is not maintainable.

The Writ Petition is devoid of merits and is dismissed. No costs.

(K.C.Bhanu, J.)

08.09.2005

DRK

THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 7632 of 2005

Date: 08.09.2005

Between:

Ch. Bharat, s/o. Gabriel, r/o. Gorsa village,

U.Kottapalli mandal, E.G. district

…Petitioner

and

1)The Deputy Registrar of Co-operative Societies,

Kakinada, East Godavari district & 3 others

…Respondents